

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HOWLAND 3 INVESTMENTS, LLC,
EASY STREET AUTO WASH, INC., and
JEFF MCCARTY,

Plaintiffs,

v.

HERITAGE COAL COMPANY, LLC,
PEABODY COAL COMPANY, LLC,
PEABODY COAL COMPANY, a
corporation, and PEABODY HOLDING
COMPANY, INC.,

Defendants.

Case No. 09-cv-451-JPG

MEMORANDUM AND ORDER

This matter comes before the Court's Memorandum and Order (Doc. 22) and Plaintiffs' Motion to Voluntarily Dismiss Defendants Peabody Coal Company, LLC, and Peabody Coal Company, a corporation (Doc. 21), pursuant to Federal Rule of Civil Procedure 41(a)(2). It has come to the Court's attention that, while said order references and grants Plaintiffs' motion to *voluntarily* dismiss, it refers to the incorrect document number in the text (doc 17.) The Court has yet to rule on Defendants' motion to dismiss, and the previous order's inadvertent reference to such should be ignored. In addition, for clarity, the Court reiterates its order regarding Plaintiffs' motion to voluntarily dismiss as follows.

Rule 41(a)(2) provides that only the Court may dismiss an action after an adverse party has filed an answer or motion for summary judgment and in the absence of a stipulation of dismissal of an entire case signed by all parties.

Plaintiffs have been advised that Defendants Peabody Coal Company, LLC, and Peabody

Coal Company, a corporation, do not currently exist. Rather, these entities are names by which Defendant, Heritage Coal Company, LLC, was formerly known. Plaintiffs have conferred with Defendants' counsel, who have no objections. Because the Court has authority to dismiss the action against the currently non-existent Defendants under Federal Rule of Civil Procedure 41(a)(2), the Court hereby **GRANTS** the Motion to Voluntarily Dismiss (Doc. 21), **DISMISSES without prejudice** Defendants Peabody Coal Company, LLC, and Peabody Coal Company, a corporation, **VACATES** the Court's Memorandum and Order (Doc. 22) insofar as it relates to Defendants' Motion to Dismiss (Doc. 17), and **GRANTS** Plaintiffs an extension of time until September 11, 2009, to respond to Defendants' motion to dismiss.

IT IS SO ORDERED.

DATED: September 1, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE